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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,395	02/02/2001	John Richard Skerrett	AFH-13782.1	2248

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EXAMINER

BUTLER, MICHAEL E

ART UNIT PAPER NUMBER

3653

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/776,395

Applicant(s)

SKERRETT ET AL.

Examiner

Michael Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-8 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) 17-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

#### ***Priority***

2. Applicant's claim(s) of priority as a divisional application 09/106978 (US Patent 6213346) filed 6/29/98 is acknowledged.

#### ***Drawings***

3. New drawings will be required contingent upon allowance because the drawings were declared informal by the applicant.

Two separate sets of claims were submitted with the 10/3/2005 petition for revival. One set (set A including an addition to claim 1 comprising: “) is an amendment complying with an amendment to the claims of 10/9/2003, the other set (set B) matches the previous 10/9/2003 claims in scope. The status identifiers clearly do not match the present state of the claims and as such, the set B amendment to the claims filed on 10/3/2005 does not comply with the requirements of 37 CFR 1.121(c).

The set A amendment to the claims have been entered.

#### ***Election/Restriction***

4. Acknowledgement of the applicant's election without traverse in paper number 9 was made and the restriction requirement was made final 6/27/2002 in paper 10.

Applicant has amended group II claim 17 to depend from generic claim 1. As such, withdrawn claim 17 is now subject to rejoinder contingent upon dependence from an allowable base claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claim 1 and 6-8 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lloyd et al. '382 (EP 0302382A1).

(re: cl 1) napkin assembly comprising (p2 L 21-25):  
first continuous napkin sheet having a plurality of napkins having basis weight of 20-40 gsm (p2 L 45-47)  
each napkin interconnected to the adjacent napkin by a plurality of tabs (Fig. 2, 22)  
second continuous napkin sheet comprising a plurality of napkins each napkin comprising a plurality of sheets (p2 L 45-47)  
first and second napkin sheets positioned proximate one another in nested formation (p3 L 44-47);  
the tabs oriented in a direction parallel to (tab between perforations 12 of fig 2 and fig 3);  
(re: cl 6) machine direction tensile is greater than 2000 g (table 1)  
(re: cl 7) T/S ratio is greater than .03 (p3 L 25-27, derivable from the 1.5/11 ratio);  
(re: cl 8) tab strength is greater than 30 g-f. (p 3 L 24-26 for napkins at least 2.8 cm).

Lloyd et al. '382 either anticipates the claimed invention or it would have been obvious to omit the extra longitudinal fold as a way of saving expense or folding, or material or saving space.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

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patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4, and 6-8 are rejected under 35 U.S.C. 103(a) as obvious over Lloyd et al.

'382 which discloses the elements previously discussed and further discloses:

(re: cl 4) the napkin basis weight is about 30 gsm (p2 L 45-47, 30 GSM is the midrange of 25-35 gsm).

9. Claims 1-2, 4, and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. '382 in view of Young et al. with Lloyd et al. '382 disclosing the elements previously discussed and further disclosing:

at least on napkin terminates at about the fold of a respective napkin (fig 2);

Young disclosing the elements not explicitly taught by Lloyd et al. '382 of:

first member integrally formed with second member formed (c6 L 6-23).

It would have been obvious at the time of the invention to modify the Lloyd et al. with an integrally formed web of Young et al. because it is easier to cut a single web in an automated manufacturing system into plural webs than to assemble separate webs as taught by Young et al. and thereby come up with the instant invention.

10. Claims 1, 4, and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. '382 in view of Everhart with Lloyd et al. '382 disclosing the elements previously discussed and Everhart disclosing:

(re: cl 5) napkins comprise pulp fibers (c4 L 47).

It would have been obvious for Lloyd et al. to use pulp fibers to make the napkins of pulp fibers because pulp based fibers are the most prevalent materials used in making paper, provide

an absorbent paper, and are low priced as taught by Everhart and thereby come up with the present invention.

11. Claims 1, 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. '382 in view of Cook et al. with Lloyd et al. '382 disclosing the elements previously discussed and Cook et al. further disclosing:

(re: cl 4) the napkin basis weight is about 30 gsm (c 9 L 1-3);  
(re: cl 5) napkins comprise pulp fibers (c4 L 47);  
(re: cl 8) tab strength is greater than 30 g-f. (c10 L 15-30).

It would have been obvious for Lloyd et al. '382 to use a napkin basis weight of about 30 gsm because thin napkins may be sold cheaper than heavier napkins as taught by Cook et al. and thereby come up with the present invention.

It would have been obvious for Lloyd et al. '382 to use pulp fibers to make the napkins of pulp fibers because pulp based fibers are the most prevalent materials used in making paper, provide an absorbent paper, and are low priced as taught by Cook et al. and thereby come up with the present invention.

12. Claims 1, 3-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. '382 in view of Dwiggins et al. wherein Lloyd et al. '382 discloses the elements previously discussed and further discloses:

(re: cl 3) at least 300 napkins terminate proximate a fold between first and second members (c3 L 26-31);  
at least one napkin from the first sheet terminates at the fold of the second sheet (c2 L 35-59).

Dwiggins et al. discloses the use of a stack size of 500 napkins (c24 table 10).

It would have been obvious at the time of the invention to increase the stack size of Lloyd et al. '382 to 500 napkins because 500 sheet refill clips are available and need be

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refilled less frequently as taught by Dwiggins et al. thereby coming up with the instant invention.

***Response to Amendments/Arguments***

13. The applicant's arguments have been fully considered but they are unpersuasive in patentably distinguishing the claims over the prior art.

Lloyd et al. '382 while disclosing a supplemental fold perpendicular to the plurality of tabs, nonetheless contains all. Simple omission of the supplemental fold 22 would result in Lloyd having all folds parallel to the plurality of tabs. Applicant needs distinguish his invention over the prior art premised on what is added over the prior art rather than what applicant is omitting. Contrary to applicant's assertion, the fold 22 is not an indispensable element of Lloyd et al. '382 as the same tensile strength may be obtained with a thicker tissue. Even without the fold, Lloyd et al. '382 would properly function with a thinner tissue as a lighter tissue does not need as high a tensile strength when pulled from a dispenser. As such, notwithstanding Lloyd et al. '382's absence of applicant's negative limitation, Lloyd et al. '382 anticipates and/or obviates applicant's claim.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (571) 272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Michael E. Butler*

Michael E. Butler  
Examiner

  
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